



General Assembly

February Session, 2002

Raised Bill No. 5514

LCO No. 1539

Referred to Committee on Judiciary

Introduced by:
(JUD)

AN ACT CONCERNING BANK ACCOUNT EXECUTIONS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 52-367b of the general statutes, as amended by
2 section 1 of public act 01-196 and section 12 of public act 01-9 of the
3 June special session, is repealed and the following is substituted in lieu
4 thereof (*Effective October 1, 2002*):

5 (a) Execution may be granted pursuant to this section against any
6 debts due from any banking institution to a judgment debtor who is a
7 natural person, except to the extent such debts are protected from
8 execution by sections 52-352a, 52-352b, 52-352c, of the general statutes,
9 revision of 1958, revised to 1983, 52-354 of the general statutes, revision
10 of 1958, revised to 1983, 52-361 of the general statutes, revision of 1958,
11 revised to 1983 and section 52-361a, as well as by any other laws or
12 regulations of this state or of the United States which exempt such
13 debts from execution.

14 (b) If execution is desired against any such debt, the plaintiff
15 requesting the execution shall [notify] submit an application for such
16 execution to the clerk of the court. In a Title IV-D case, the [request]

17 application for execution shall be accompanied by an affidavit signed
 18 by the [levying] serving officer attesting to an overdue support amount
 19 of five hundred dollars or more which accrued after the entry of an
 20 initial family support judgment. If the [papers are] application is in
 21 order, the clerk shall issue such execution containing a direction that
 22 the officer serving [the same] such execution shall, within seven days
 23 from the receipt by the serving officer of such execution, make demand
 24 (1) upon the main office of any banking institution having its main
 25 office within the county of [such] the serving officer, or (2) if such main
 26 office is not within [such] the serving officer's county and such
 27 banking institution has one or more branch offices within such county,
 28 upon an employee of such a branch office, such employee and branch
 29 office having been designated by the banking institution in accordance
 30 with regulations adopted by the Commissioner of Banking, in
 31 accordance with chapter 54, for payment of any such nonexempt debt
 32 due to the judgment debtor and, after having made such demand, shall
 33 serve a true and attested copy of the execution, together with the
 34 affidavit and exemption claim form prescribed by subsection [(k)] (l) of
 35 this section, with [such] the serving officer's doings endorsed thereon,
 36 with the banking institution officer upon whom such demand is made.
 37 If the officer serving such execution has made an initial demand
 38 pursuant to this subsection within such seven-day period, the serving
 39 officer may make additional demands [on] upon the main office of
 40 other banking institutions or employees of other branch offices
 41 pursuant to subdivision (1) or (2) of this subsection, provided any such
 42 additional demand is made not later than forty-five days from the
 43 receipt by the officer of such execution. The serving officer shall make
 44 such initial demand upon a single banking institution. The serving
 45 officer shall make each such additional demand upon a single banking
 46 institution, other than the banking institution upon which the prior
 47 demand was made, if the serving officer has determined that
 48 insufficient funds are available from such prior demand to satisfy the
 49 execution.

50 (c) [If] Except as provided in this subsection and subsection (d) of

51 this section, if any such banking institution upon which such execution
 52 is served and upon which such demand is made is indebted to the
 53 judgment debtor, [it] the banking institution shall remove from the
 54 judgment debtor's account the amount of such indebtedness not
 55 exceeding the amount due on such execution before its midnight
 56 deadline, as defined [by] in section 42a-4-104. [Notwithstanding the
 57 provisions of this subsection, if electronic direct deposits that are
 58 readily identifiable as exempt federal veterans' benefits, Social Security
 59 benefits, including, but not limited to, retirement, survivors' and
 60 disability benefits or supplemental security income benefits were made
 61 to the judgment debtor's account during the thirty-day period
 62 preceding the date that the execution was served on the banking
 63 institution, then a] A banking institution shall leave the lesser of the
 64 account balance or [eight hundred dollars] the amount of such
 65 indebtedness exempt from execution under subsection (d) of this
 66 section in the judgment debtor's account, [;] provided nothing in this
 67 subsection shall be construed to limit a [bank's] banking institution's
 68 right or obligation to remove such funds from the judgment debtor's
 69 account if required by any other provision of law or by a court order.
 70 The judgment debtor shall have access to such funds left in the
 71 judgment debtor's account pursuant to this subsection and subsection
 72 (d) of this section. The banking institution [may] shall notify the
 73 judgment creditor [that funds] and the serving officer of the amount of
 74 funds that have been left in the judgment debtor's account pursuant to
 75 this subsection and subsection (d) of this section. The serving officer
 76 shall keep a record of the amount of funds that are exempt from
 77 execution under this section in each service of the execution and
 78 demand upon a banking institution. Nothing in this subsection or
 79 subsection (d) of this section shall alter the exempt status of funds
 80 which are exempt from execution under subsection (a) of this section
 81 or under any other provision of state or federal law, or the right of a
 82 judgment debtor to claim such exemption. Nothing in this subsection
 83 or subsection (d) of this section shall be construed to affect any other
 84 rights or obligations of the banking institution with regard to the funds

85 in the judgment debtor's account.

86 (d) (1) Except as provided in subdivision (2) of this subsection or
87 pursuant to a determination by a court of the amount of any funds of
88 the judgment debtor that are exempt from execution, a banking
89 institution shall leave in the judgment debtor's account the greater of
90 one thousand dollars or the amount of readily identifiable exempt
91 electronic direct deposits.

92 (2) If the serving officer, after a prior service of the execution and
93 demand made on a banking institution, receives notice that one or
94 more other banking institutions have funds of the judgment debtor
95 that are exempt from execution under this subsection, the amount of
96 such funds, other than readily identifiable exempt electronic direct
97 deposits, that are exempt from execution under this subsection shall be
98 reduced by the amount of any funds that were exempt from execution
99 under this subsection in such prior service and demand. The banking
100 institution may rely on the representations of the serving officer as to
101 the amount of funds of the judgment debtor that were exempt from
102 execution under this subsection in a prior service of the execution and
103 demand made on another banking institution.

104 (3) For the purposes of this subsection, "readily identifiable exempt
105 electronic direct deposits" means electronic direct deposits made to the
106 judgment debtor's account, during the thirty days preceding the date
107 that the execution was served on the banking institution, that are
108 readily identifiable as (A) federal veterans' benefits, (B) Social Security
109 benefits, including, but not limited to, retirement, survivors' and
110 disability benefits or supplemental security income benefits, or (C)
111 child support payments processed and received pursuant to Title IV-D
112 of the Social Security Act.

113 ~~[(d)]~~ (e) If any funds are removed from the judgment debtor's
114 account pursuant to subsection (c) of this section, upon receipt of the
115 execution and exemption claim form from the serving officer, the
116 banking institution shall forthwith mail copies thereof, postage

117 prepaid, to the judgment debtor at the judgment debtor's last known
118 address with respect to the affected accounts on the records of the
119 banking institution. The banking institution shall hold the amount
120 removed from the judgment debtor's account pursuant to subsection
121 (c) of this section for fifteen days from the date of the mailing to the
122 judgment debtor and during such period shall not pay the serving
123 officer.

124 ~~[(e)]~~ (f) To prevent the banking institution from paying the serving
125 officer, as provided in subsection ~~[(h)]~~ (i) of this section, the judgment
126 debtor shall give notice of a claim of exemption by delivering to the
127 banking institution, by mail or other means, the exemption claim form
128 or other written notice that an exemption is being claimed. The
129 banking institution may designate an address to which the notice of a
130 claim of exemption shall be delivered. Upon receipt of such notice, the
131 banking institution shall, within two business days, send a copy of
132 such notice to the clerk of the court which issued the execution.

133 ~~[(f)]~~ (g) (1) Upon receipt of an exemption claim form, the clerk of the
134 court shall enter the appearance of the judgment debtor with the
135 address set forth in the exemption claim form. The clerk shall
136 forthwith send file-stamped copies of the form to the judgment
137 creditor and judgment debtor with a notice stating that the disputed
138 ~~[assets]~~ funds are being held for forty-five days from the date the
139 exemption claim form was received by the banking institution or until
140 a court order is entered regarding the disposition of the funds,
141 whichever occurs earlier, and the clerk shall automatically schedule
142 the matter for a short calendar hearing. The claim of exemption filed
143 by such judgment debtor shall be prima facie evidence at such hearing
144 of the existence of the exemption.

145 (2) Upon receipt of notice from the banking institution pursuant to
146 subsection (c) of this section, a judgment creditor may, on an ex parte
147 basis, present to a judge of the Superior Court an affidavit sworn
148 under oath by a competent party demonstrating a reasonable belief

149 that such judgment debtor's account contains funds which are not
 150 exempt from execution and the amount of such nonexempt funds.
 151 Such affidavit shall not be conclusory but is required to show the
 152 factual basis upon which the reasonable belief is based. If such judge
 153 finds that the judgment creditor has demonstrated a reasonable belief
 154 that such judgment debtor's account contains funds which are not
 155 exempt from execution, such judge shall authorize the judgment
 156 creditor to submit a written application to the clerk of the court for a
 157 hearing on the exempt status of funds left in the judgment debtor's
 158 account pursuant to subsection (c) of this section. The judgment
 159 creditor shall promptly send a copy of the application and the
 160 supporting affidavit to the judgment debtor. Upon receipt of such
 161 application, the clerk of the court shall automatically schedule the
 162 matter for a short calendar hearing and shall give written notice to
 163 both the judgment creditor and the judgment debtor. The notice to the
 164 judgment creditor pursuant to subsection (c) of this section shall be
 165 prima facie evidence at such hearing that the funds in the account are
 166 exempt funds. The burden of proof shall be upon the judgment
 167 creditor to establish the amount of funds which are not exempt.

168 ~~[(g)]~~ (h) If an exemption claim is made pursuant to subsection ~~[(e)]~~
 169 (f) of this section, the banking institution shall continue to hold the
 170 amount removed from the judgment debtor's account for forty-five
 171 days or until a court order is received regarding disposition of the
 172 funds, whichever occurs earlier. If no such order is received within
 173 forty-five days of the date the banking institution sends a copy of the
 174 exemption claim form or notice of exemption to the clerk of the court,
 175 the banking institution shall return the funds to the judgment debtor's
 176 account.

177 ~~[(h)]~~ (i) If no claim of exemption is received by the banking
 178 institution within fifteen days of the mailing to the judgment debtor of
 179 the execution and exemption claim form pursuant to subsection ~~[(d)]~~
 180 (e) of this section, the banking institution shall, upon demand,
 181 forthwith pay the serving officer the amount removed from the

182 judgment debtor's account, and the serving officer shall thereupon pay
183 such sum, less such serving officer's fees, to the judgment creditor,
184 except to the extent otherwise ordered by a court.

185 [(i)] (j) The court, after a hearing conducted pursuant to subsection
186 [(f)] (g) of this section, shall enter an order determining the issues
187 raised by the claim of exemption. The order shall include a direction
188 for payment of the serving officer's fees with respect to any funds that
189 are found to be nonexempt. The clerk of the court shall forthwith send
190 a copy of such order to the banking institution. Such order shall be
191 deemed to be a final judgment for the purposes of appeal. No appeal
192 shall be taken except within seven days of the rendering of the order.
193 The order of the court may be implemented during such seven-day
194 period, unless stayed by the court.

195 [(j)] (k) If both exempt and nonexempt moneys have been deposited
196 into an account, for the purposes of determining which moneys are
197 exempt under this section, the moneys most recently deposited as of
198 the time the execution is [levied] served shall be deemed to be the
199 moneys remaining in the account.

200 [(k)] (l) The application, execution, exemption claim form [,
201 execution] and clerk's notice regarding the filing of a claim of
202 exemption shall be in such form as prescribed by the judges of the
203 Superior Court or their designee. The execution shall include space for
204 the serving officer to indicate the amount of funds levied upon and the
205 amount of funds exempt from execution under this section in each
206 service of the execution and in any previous execution pursuant to the
207 judgment. The exemption claim form shall be dated and include a
208 checklist and description of the most common exemptions, instructions
209 on the manner of claiming the exemptions [,] and a space for the
210 judgment debtor to certify those exemptions claimed under penalty of
211 false statement.

212 [(l)] (m) If records or testimony are subpoenaed from a banking
213 institution in connection with a hearing conducted pursuant to

214 subsection [(f)] (g) of this section, the reasonable costs and expenses of
 215 the banking institution in complying [therewith] with the subpoena
 216 shall be recoverable by [it] the banking institution from the party
 217 requiring such records or testimony, provided, the banking institution
 218 shall be under no obligation to attempt to obtain records or
 219 documentation relating to the account executed against which are held
 220 by any other banking institution. The records of a banking institution
 221 as to the dates and amounts of deposits into an account in [such] the
 222 banking institution shall, if certified as true and accurate by an officer
 223 of the banking institution, be admissible as evidence without the
 224 presence of the officer in any hearing conducted pursuant to
 225 subsection [(f)] (g) of this section to determine the legitimacy of a claim
 226 of exemption made under this section.

227 [(m)] (n) If there are moneys to be removed from the judgment
 228 debtor's account, prior to the removal of such moneys pursuant to
 229 subsection (c) of this section, the banking institution shall receive from
 230 the serving officer as representative of the judgment creditor a fee of
 231 eight dollars for [its] the banking institution's costs in complying with
 232 the provisions of this section which fee may be recoverable by the
 233 judgment creditor as a taxable cost of the action.

234 [(n)] (o) If the banking institution fails or refuses to pay over to the
 235 serving officer the amount of such debt, not exceeding the amount due
 236 on such execution, such banking institution shall be liable in an action
 237 therefor to the judgment creditor named in such execution for the
 238 amount of nonexempt moneys which [it] the banking institution failed
 239 or refused to pay over, excluding funds [of up to eight hundred
 240 dollars] which the banking institution in good faith allowed the
 241 judgment debtor to access pursuant to [subsection (c)] subsections (c)
 242 and (d) of this section. The amount so recovered by such judgment
 243 creditor shall be applied toward the payment of the amount due on
 244 such execution. Thereupon, the rights of the banking institution shall
 245 be subrogated to the rights of the judgment creditor. If such banking
 246 institution pays exempt moneys from the account of the judgment

247 debtor over to the serving officer contrary to the provisions of this
 248 section, such banking institution shall be liable in an action therefor to
 249 the judgment debtor for any exempt moneys so paid and such banking
 250 institution shall refund or waive any charges or fees by the [bank]
 251 banking institution, including, but not limited to, dishonored check
 252 fees, overdraft fees or minimum balance service charges and legal
 253 process fees, which were assessed as a result of such payment of
 254 exempt moneys. Thereupon, the rights of the banking institution shall
 255 be subrogated to the rights of the judgment debtor.

256 [(o)] (p) Except as provided in subsection [(n)] (o) of this section, no
 257 banking institution or any officer, director or employee [thereof] of
 258 such banking institution shall be liable to any person with respect to
 259 [anything] any act done or omitted in good faith or through the
 260 commission of a bona fide error that occurred despite reasonable
 261 procedures maintained by the banking institution to prevent such
 262 errors in complying with the provisions of this section.

263 [(p)] (q) Nothing in this section shall in any way restrict the rights
 264 and remedies otherwise available to a judgment debtor at law or in
 265 equity.

266 [(q)] (r) Nothing in this section shall in any way affect any rights of
 267 the banking institution with respect to uncollected funds credited to
 268 the account of the judgment debtor, which rights shall be superior to
 269 those of the judgment creditor.

270 [(r)] (s) For purposes of this subsection, "exempt" shall have the
 271 same meaning as provided in subsection (c) of section 52-352a. Funds
 272 deposited in an account that has been established for the express
 273 purpose of receiving electronic direct deposits of public assistance
 274 payments from the Department of Social Services shall be exempt.

This act shall take effect as follows:	
Section 1	<i>October 1, 2002</i>

Statement of Purpose:

To implement the recommendations of the Connecticut Law Revision Commission concerning bank account executions and to make technical changes.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]